

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JERI E. GALBRAITH,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of the Social
Security Administration,**

Defendant.

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Case No. CIV-07-397-R

**FINDINGS & RECOMMENDATION
OF MAGISTRATE JUDGE**

This matter is before the Court on the Plaintiff's motion for attorney fees and expenses under the Equal Access to Justice Act (hereafter called "EAJA"), 28 U.S.C. §2412(d). The Defendant Commissioner has responded to the motion and objects only to an award of costs. This case has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(3). For the reasons stated herein, it is recommended that Plaintiff's application be **GRANTED** in the amount of \$3,828.00 representing attorney fees and **DENIED** as to \$350.00 in filing fees.

DISCUSSION & FINDINGS

Under the EAJA, a court shall award a prevailing party attorney fees unless the court finds that the position of the government was substantially justified or that special circumstances make an award unjust. 28 U.S.C. §2412(d)(1)(A). The EAJA requires prevailing parties seeking an award of fees to file with the court, "within thirty days of final judgment in the action" an application for fees and other expenses. 28 U.S.C. §2412(d)(1)(B). In order to be a prevailing party Plaintiff must demonstrate that a final judgment has been entered by the court. A "final judgment" for purposes of 28 U.S.C. §2412(d)(1)(B) means a judgment rendered by a court that terminates the civil action

for which the EAJA fees may be received. The court entered its final judgment on March 27, 2008 [Doc. 20-22].

Plaintiff seeks an attorney fee award of \$3,828.00 based upon 23.2 hours at \$165.00 per hour. The court finds that both the hours claimed and the hourly rate requested are reasonable.

Plaintiff also seeks to recover the filing fee of \$350.00. The filing fee is a "cost" properly recoverable upon the filing of a bill of costs. Plaintiff has not complied with LCvR 54.1 by filing and serving a bill of costs within fourteen (14) days after entry of judgment. Thus, Plaintiff's motion for costs of \$350.00 should be denied. 28 U.S.C. §2412(d)(1)(A), (B); 28 U.S.C. §§1914, 1920.

RECOMMENDATION

Based on the foregoing, the undersigned magistrate judge recommends that the Plaintiff's motion for attorney fees under the EAJA be **GRANTED** in the amount of \$3,828.00 based upon 23.2 hours at \$165.00 per hour. It is further recommended that Plaintiff's motion for costs in the amount of \$350.00 be **DENIED**. The parties are advised of their right to object to these findings and recommendation within fifteen (15) days of the date of the filing hereof in accordance with 28 U.S.C. §636 and Local Court Rule 72.1(a).

The foregoing Findings and Recommendation disposes of all issues referred to the undersigned magistrate judge in the above captioned matter.

ENTERED this the 11th day of August, 2008.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE